

**REMARKS**

Applicants thank the Examiner for withdrawing the rejection of claims 102-106 under 37 CFR 1.75(c).

**Amendment to the Claims**

Claims 98-99, 101-106 and 117-120 are pending and under consideration in the instant application. Claims 98, 117, 119 and 120 have been amended and new claim 121 has been added. Claim 98 has been amended to recite that the autostart means includes a means for regulating voltage across the capacitance sensor. Claim 117 has been amended to recite that the optical sensor is aligned with the test strip in the receptacle. Claims 119 and 120 have been amended to replace “test strip” with “housing.” Further, the term “into the receptacle” has been deleted from claim 120.

Support for the amendment to claim 98 can be found, *inter alia*, at page 21, line 29 – p.23, line 12, of the application as originally filed (paragraph 63 of U.S. Publication 2005/0074899). Support for the amendment to claims 117 and 119 can be found at page 18, lines 13-16, and page 19, line 34 – page 20, line 1, (paragraphs 56 and 59 of U.S. Publication 2005/0074899), respectively. Support for the amendment to claim 120 and for new claim 121 can be found at page 24, lines 11-16 of the application as originally filed (paragraph 66 of U.S. Publication 2005/0074899). No new matter is added by the amendment to the claims. Accordingly, entry into the instant application is proper and respectfully requested.

**Rejection Under 35 U.S.C. §102**

Claims 98-99 and 101-106 have been rejected under 35 U.S.C. § 102 as allegedly being anticipated by U.S. Patent No. 5,554,531 (“Zweig”). The Office Action states that there is no structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art.

Applicants respectfully submit that Zweig does not anticipate amended independent claim 98 because the reference does not disclose each and every element of

amended claim 98. Applicants respectfully submit that the claims of the instant application are drawn to an apparatus comprising, *inter alia*, an autostart means that comprises a means for regulating voltage across the capacitance sensor. As described on page 22 of the application (paragraph 63 of U.S. Publication 2005/0074899), a preferred means of regulating voltage across the capacitance sensor is by using a switch. As seen in Figure 6, when the switch is open, *i.e.*, when the capacitance sensor is not grounded, the voltage across the capacitance sensor ramps up. When the switch is closed, the capacitance sensor is grounded and the voltage ramps down. The ramp-up and ramp-down happen periodically. This, as explained on page 22 of the application, creates a sawtooth waveform, which changes when a sample or buffer is applied to the test strip.

Zweig does not disclose an autostart means that comprises a means for regulating voltage across the capacitance sensor. At best, Zweig discloses conductive plates that “will be connected to conventional electrical resistance monitoring circuitry” or plates that will be heated “by conventional electrical resistance heaters.” See column 8, lines 52-53 and lines 57-58, respectively. Conventional electrical resistance monitoring circuitry does not include a means that allows the voltage to change with time and ramp up or down periodically. Therefore, Applicants submit that the present invention, that provides a means for regulating voltage across the capacitance sensor that allows the voltage across the capacitance sensor to ramp up and down periodically, is different from, and therefore not anticipated by, Zweig. Applicants request that the rejection under 35 U.S.C. §102 be withdrawn.

### **Double Patenting**

Claims 98-106 have been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 and 5-8 of U.S. Patent No. 6,136,610. As stated in Applicants’ response of September 7, 2006, with respect to claims 98, 99 and 101-106, Applicants will file a terminal disclaimer in compliance with 37 CFR 1.321(c) once the claims of the present application are indicated as allowable but for the double patenting issue.

**Rejection Under 35 U.S.C. §112, First Paragraph**

Claims 119 and 120 have been rejected under 35 U.S.C. § 112, first paragraph, for allegedly failing to comply with the written description requirement. Specifically, the Examiner states that “[t]his is a new matter rejection” because the specification teaches that the moving mechanism of claim 119 “is attached to the housing and not to the test strip” and that the sensor of claim 120 “detects insertion of the cartridge, not the test strip.”

Applicants respectfully submit that amended claims 119 and 120 are supported by the specification and do not contain new matter. In particular, the moving mechanism of amended claim 119 is attached to the housing, and is therefore, as acknowledged by the Examiner, consistent with the disclosure on pages 19-20. Further, amended claim 120 recites, *inter alia*, a sensor that detects the insertion of the housing, not the test strip. This too is consistent, as acknowledged by the Examiner, with the disclosure on page 24.

Accordingly, Applicants request that the rejection of claims 119 and 120 under 35 U.S.C. §112, first paragraph, be withdrawn.

**Rejection Under 35 U.S.C. §112, Second Paragraph**

Claim 117 has been rejected under 35 U.S.C. § 112, second paragraph, as indefinite for using the expression “when the test strip is in place.” Specifically, the Examiner states that “it is unclear what place is being referred to.” Applicants submit that the expression is not indefinite because the location of the test strip is clearly described in the specification. However, in order to expedite prosecution, claim 117 has been amended to recite that the optical sensor is aligned with the test strip in the receptacle. Applicants submit that amended claim 117 is definite and request that the rejection under 35 U.S.C. § 112, second paragraph, be withdrawn.

**CONCLUSION**

In light of the above amendments and remarks, Applicants respectfully submit that claims 98-99, 101-106 and 117-121 satisfy all the criteria for patentability and are in

condition for allowance. Applicants request that the Examiner reconsider this application with a view towards allowance and solicit an early passage of claims 98-99, 101-106 and 117-121 to issuance. The Examiner is invited to call the undersigned attorney, if a telephone call could help resolve any remaining items.

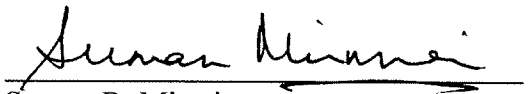
Pursuant to 37 CFR § 1.136(a)(3), the Commissioner is hereby authorized to charge all required fees, including fees under 37 CFR § 1.17 and all required extension of time fees, or credit any overpayment, to Deposit Account No. 50-1283.

Dated: February 14, 2007

Respectfully submitted,

COOLEY GODWARD KRONISH LLP  
ATTN: Patent Group  
1200 19th Street N.W.; Suite 500  
Washington, DC 20036-2412  
Tel: (415) 693-2002  
Fax: (415) 692-2222

By:

  
Suman R. Mirmira  
Reg. No. 55,458